

Message Text

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ACTION L-01

INFO OCT-01 SS-14 ISO-00 SCA-01 ARA-08 EB-03 INR-05 SNM-02

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R 172209X APR 75

FM AMEMBASSY SAN JOSE

TO SECSTATE WASHDC 9923

C O N F I D E N T I A L SECTION 1 OF 2 SAN JOSE 1541

LIMDIS

E.O. 11652: GDS

TAGS: PFOR, PGOV, CS

SUBJECT: COSTA RICAN EXTRADITION LAW

REF: DEPT'S A-4610 OF JUNE 6, 1974

1. FONMIN FACIO DELIVERED TO AMBASSADOR APRIL 14 A NOTE WITH ATTACHED MEMORANDUM ON THIS SUBJECT RESPONDING TO EMBASSY'S AID MEMOIRE OF JUNE 24, 1974 WHICH WAS DRAWN FROM REFAIR. TEXTS OF NOTE AND MEMORANDUM WERE POUCHED TO DEPARTMENT APRIL 15 ATTENTION ARA/CEN LAZAR. ACTION REQUESTED: DEPARTMENT IS REQUESTED TO EXAMINE THIS MEMORANDUM AND FOLLOWING COMMENTS WITH CARE, AND TO CONSIDER HIRE OF LOCAL ATTORNEY FOR SAME PURPOSE, AS BASIS FOR POSSIBLE NEW APPROACH TO GOCR,7

2. FOLLOWING ANALYSIS AND COMMENTS ON FONMIN'S RESPONSE ARE KEYED TO SUBSTANTIVE PARAGRAPHS OF REFAIR.

A) PARAGRAPH 3. MEMORANDUM EMPHASIZES THAT IN COSTA RICA TREATIES TAKE PRECEDENCE OVER INTERNAL LEGISLATION IN ACCORDANCE WITH THE CONVENTION OF VIENNA ON TREATIES, THE NATIONAL CONSTITUTION, AND THE BUSTAMANTE CODE. IT IS THEREFORE THE OPINION OF THE FOREIGN MINISTRY THAT THE EXTRADITION LAW "NEITHER BENEFITS NOR PREJUDICES THE POSSIBLE EXTRADITION OF

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A FOREIGN CITIZEN" REQUESTED UNDER A VALID TREATY.

THE MEMORANDUM GOES ON TO SAY THAT, AGAIN ACCORDING TO THE MINISTRY'S OPINION, THE EXTRADITION TREATY WOULD GOVERN EXCLUSIVELY ALL SUBSTANTIVE MATTERS DEALT WITH IN THE TREATY. WITH RESPECT TO TERMINOLOGY AND PROCEDURES NOT COVERED BY THE TREATY, THE MINISTRY BELIEVES THAT THE LAW WOULD APPLY UNLESS A SUBSTRUCTIVE RULE OF THE TREATY WOULD BE INVALIDATED THEREBY.

B) PARAGRAPH 4. MEMORANDUM EMPHASIZES THAT ARTICLE 1 OF THE TREATY DOES NOT REFER TO "TERRITORY" BUT RATHER TO "JURISDICTION". THEREFORE "THE CONCEPT OF TERRITORY IN LAW 5497 DOES NOT LIMIT THE CAPACITY OF THE GOVERNMENT OF COSTA RICA TO GRANT EXTRADITION TO THE UNITED STATES" UNDER THE TREATY. THE MEMORANDUM CONTINUES THAT ON ACCEPTING THE HAGUE CONVENTION COSTA RICA ACCEPTED THE CONCEPT OF NON-TERRITORIAL JURISDICTION WHICH IS CONTAINED THEREIN FOR PURPOSES OF THE CONVENTION. THE MEMORANDUM AGAIN REAFFIRMS COSTA RICA'S RECOGNITION OF THE LEGAL PRECEDENCE OF INTERNATIONAL TREATIES OVER INTERNAL LEGISLATION AND RATHER INDIGNANTLY INSISTS THAT COSTA RICA HAS SHOWN FULL EVIDENCE OF ITS FAITHFUL COMPLIANCE WITH INTERNATIONAL AGREEMENTS AND ESPECIALLY THOSE IN THE FIELDS OF TERRORISM AND NARCOTICS CONTROL.

C) PARAGRAPH 5. THE FOREIGN MINISTRY SAYS THAT THE RULE CONTAINED IN ARTICLE 2(7) OF THE EXTRADITION LAW CANNOT BE APPLIED TO INVALIDATE AN EXTRADITION WHICH WOULD BE PROPER UNDER ARTICLE II OF THE TREATY SINCE, ONCE AGAIN, TREATIES ARE SUPREME.

D) PARAGRAPH 6. THE MINISTRY MAKES THE SAME POINT WITH RESPECT TO ARTICLES 2(11) AND 9(7B) OF THE EXTRADITION LAW EXCEPT THAT BY CONSTITUTIONAL LIMITATION EXTRADITION CANNOT BE PERMITTED BY COSTA RICA IF THE PENALTY FOR THE OFFENSE IS DEATH.

E) PARAGRAPH 7. THE MINISTRY'S MEMORANDUM FULLY SUPPORTS THE PRECEPTS OF ARTICLE 4 OF LAW 5497 AS BEING CONSISTENT WITH INTERNATIONAL LAW AND PRACTICE. NO CONFIDENTIAL

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REFERENCE IS MADE IN THIS PARTICULAR SECTION TO THE SUPREMACY OF THE TREATY. IT SEEMS CLEAR THAT THE MINISTRY BELIEVES THAT A NEW REQUEST SHOULD BE DENIED IF BASED EXACTLY ON THE SAME FACTS AS OUR PREVIOUS ATTEMPT, BUT THERE IS AN IMPLICATION IN THE MEMORANDUM THAT WITH A LITTLE MORE EFFORT OUR CASE COULD BE EXPANDED AND IMPROVED TO AVOID THIS PROBLEM. EMBASSY COMMENT. IN THIS EMBASSY'S OPINION, HOWEVER, THE MINISTRY'S COMMENTS ON THIS

POINT DO NOT ADEQUATEY COVER THE FULL COPE OF
ARTICLE 4 OF THE LAW WHICH GOES ON TO SAY THT ANY
CRIMES COMMITTED BEFORE AND EARLIER EXTRADITION ATTEMPT
ARE INADMISSIBLE IN SUBSEQUENT ATTEMPTS. END COMMENT.

F) PARAGRAPH 8. THE MEMO SAYS THAT ARTICLES 2(5)
AND 9(2) OF LAW 5497 GO NO FURTHER THAN THE PROVISIONS
OF ARTICLE I OF THE TREATY WHICH REQUIRE THAT PROOFS
OF GUILT CONFORM TO THE LAWS OF THE COUNTRY IN WICH
THE ACCUSED IS FOUND. THE OTHER PROVISIONS OF THE LAW
CITED BY THE USG ARE DESCRIBED BY THE MINISTRY AS SIMPLY
GUARANTEEIG THE ACCUSED HIS RIGHTS. EMBASSY COMMENT.
THE MINISTRY'S MEMORANDUM PASSES VERY LIGHTLY OVER THE
DIFFICULT QUESTIONS POSED IN PARAGRAPH 8 OF REFAIR. IT
SEEMS TO THE EMBASS THAT THE TREATMENT OF THIS PARAGRAPH
BEGS THE ENTIRE QUESTION OF WHETHER THE USG WOULD HAVE TO
PRESENT ITS WHOLE CASE IN THE COURTS OF COSTA RICA.
THIS COMES CLOSE TO THE HEART OF CONCERNS PREVIOUSLY
EXPRESSED TO US BY PRIVATE COSTA RICAN ATTORNIES THAT
THE SO-CALLED "PROCEDURAL" REQUIREMENTS OF THE EXTRADITION
LAW COULD EFFECTIVELY DRAG OUT AND EVEN THWART SUCCESSFUL
APPLICATION OF THE TREATY. END COMMENT.

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ACTION L-01

INFO OCT-01 SS-14 ISO-00 SCA-01 ARA-06 EB-03 INR-05 SNM-02

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R 172209Z APR 75

FM AMEMBASSY SAN JOSE

TO SECSTATE WASHDC 9924

C O N F I D E N T I A L SECTION 2 OF 2 SAN JOSE 1541

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G) PARAGRAPH 9. INCORPORATION INTO THE LAW OF THE
AMERICAN CONVENTION ON
HUMAN RIGHTS IS SAID MERELY TO
EMBRACE JUDICIAL GUARANTEES OF THE ACCUSED WHICH ARE

UNIVERSALLY RECOGNIZED. "THE PRESUMPTION OF INNOCENCE APPLIES OF COURSE ONLY TO AN INDIVIDUAL WHO HAS NOT BEEN CONVICTED".

H) PARAGRAPH 10. ACCORDING TO THE MEMORANDUM, THE INTERNATIONAL AGREEMENTS CITED IN THIS PARAGRAPH PREVAIL OVER DOMESTIC LAW AND ARE THEREFORE NOT AFFECTED BY THE EXTRADITION LAW.

I) PARAGRAPH 11. IN THE MINISTRY'S OPINION, A DECISION TO GRANT EXTRADITION BY A PARTY TO THE AMERICAN CONVENTION ON HUMAN RIGHTS COULD NOT BE APPEALED TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. NEVERTHELESS, ONCE A PERSON HAS BEEN EXTRADITED PRIVATE PERSONS OR GROUPS COULD DENOUNCE ALLEGED VIOLATIONS OF THE CONVENTION TO THE COMMISSION.

J) PARAGRAPH 12. THE MEMORANDUM ALLEGES THAT THE REQUIREMENTS OF ARTICLE 9(7)(D) OF THE LAW RESPOND TO "UNIVERSALLY RECOGNIZED PRINCIPLES OF THE LAW WITH RESPECT TO NON-CONTRACTUAL RESPONSIBILITIES". EMBASSY COMMENT. THE EMBASSY IS NOT QUALIFIED TO INTERPRET THE SIGNIFICANCE
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OF THE LATTER PHRASE, BUT IT APPEARS THAT THE USG WOULD BE HELD RESPONSIBLE FOR COURT COSTS AND DEFENSE COSTS IN AN UNSUCCESSFUL EXTRADITION ATTEMPT. THESE MIGHT BE CONSIDERABLE IF VESCO WERE TO MOBILIZE IN HIS DEFENSE A FULL PANOPLY OF LAWYERS AND WITNESSES FROM HIS FAR FLUNG INTERESTS AS SEEMS LIKELY. END COMMENT.

K) PARAGRAPH 13. THE MEMORANDUM STATES THAT THE PROVISIONS OF ARTICLE 2(8) OF THE LAW ARE IN ACCORD WITH ARTICLE III OF THE TREATY WITH RESPECT TO POLITICAL OFFENSES. IT IS SAID THAT THE CONCEPT OF POLITICAL

OFFENSES IS WELL COVERED IN AMERICAN INTERNATIONAL LAW, SPECIFICALLY ARTICLE 355 OF THE BUSTAMANTE CODE AND ARTICLE IV OF THE CONVENTION ON TERRITORIAL ASYLUM. WITH RESPECT TO THE TREATMENT OF POLITICAL OFFENSES IN RECENT CONVENTIONS CONCERNING HIJACKING AND OTHER TERRORIST ACTIVITIES, THE MEMORANDUM REAFFIRMS THAT COSTA RICA IS FULLY COMMITTED TO THOSE CONVENTIONS.

L) PARAGRAPH 14. THERE APPEARS TO BE NO DISCUSSION IN THE MEMORANDUM RELATED TO THIS POINT ON THE "PUBLIC STATUS" OF THE REQUESTED PERSON WITHIN COSTA RICA.

3. GENERAL COMMENT. THE MINISTRY'S MEMORANDUM GIVES EVERY EVIDENCE OF HAVING BEEN HASTILY COMPOSED AND TYPED.

IT SEEMS CLEAR THAT FONMIN FACIO PREPARED IT HIMSELF AFTER OUR AIDE MEMOIRE WAS BROUGHT TO HIS ATTENTION BY ODUBER LAST WEEK. THE MINISTER APOLOGIZED TO THE AMBASSADOR FOR THE DELAY IN REPLYING TO THE AIDE MEMOIRE, WHICH HE SAID HE HAD NEVER SEEN BEFORE SINCE IT HAD BEEN RECEIVED IN HIS ABSENCE LAST JUNE AND FORWARDED DIRECTLY TO THE ATTORNEY GENERAL. IT IS POSSIBLE THAT THE ATTORNEY GENERAL HAD SOME INPUT INTO THE RESPONSE, BUT MOST OF THE KEY OPINIONS IN THE MEMORANDUM ARE CLEARLY STATED TO BE THE MINISTRY'S VIEWS AND THERE IS NOWHERE ANY INDICATION THAT IT REPRESENTS A FORMAL GOCR POSITION.

4. THE MEMORANDUM REPEATEDLY EMPHASIZES THAT THE EXTRADITION TREATY TAKES PRECEDENCE OVER DOMESTIC LAW ON ALL SUBSTANTIVE MATTERS. NEVERTHELESS, EVEN THIS
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PAPER SHOWS CLEARLY THAT SOME "PROCEDURAL" MATTERS MAY BE OF VITAL IMPORTANCE TO THE SUCCESS OF ANY FUTURE EXTRADITION ATTEMPT. IN ANY CASE, IF THE TREATY CLEARLY APPLIES AND THE EXTRADITION LAW DOES NOT, ONE WONDERS WHY SO MUCH EFFORT AND POLITICAL COST WERE EXPENDED A YEAR AGO IN DESIGNING AND PASSING AN EXTRADITION LAW SO CLEARLY TAILORED TO MR. VESCO.

5. THE CONTENT AND FLAVOR OF THE MEMORANDUM SUGGEST THAT SHOULD WE PURSUE THE NEGOTIATION OF A NEW EXTRADITION TREATY WE MAY BE CONFRONTED BY SEVERAL TROUBLESOME CONCEPTS OF SO-CALLED ESTABLISHED INTERNATIONAL LAW WHICH ARE IN THE LAW AND WHICH WOULD PRESUMABLY GUIDE THE COSTA RICAN NEGOTIATORS.

6. IN THE EMBASSY'S JUDGMENT, FACIO'S MEMORANDUM PRESENTS THE USG WITH AN OPPORTUNITY AND A CHALLENGE TO EXAMINE HIS COMMENTS AND THE LAW WITH GREAT CARE AND TO FORMULATE ANY FURTHER QUESTIONS OR RESERVATIONS WE MAY HAVE FOR TRANSMISSION TO THE HIGHEST LEVELS OF THE GOCR. IN THIS REVIEW WE SHOULD GIVE PARTICULAR ATTENTION TO THE LAW'S IMPLICATIONS FOR THE VESCO CASE, INCLUDING A CAREFUL EXAMINATION OF OTHER

POTENTIALLY TROUBLESOME AREAS SUCH AS ARTICLE 2(1) OF THE LAW WHICH SEEMS TO GIVE SPECIAL PROTECTION TO PENSIONADOS (LIKE VESCO), AND EVEN ARTICLE 6 WHICH APPARENTLY WOULD ALLOW THE EXECUTIVE BRANCH TO MAKE THE EXTRADITION DECISION. (ALTHOUGH THE ODUBER ADMINISTRATION HAS REPEATEDLY SAID THAT IT WILL ABIDE BY THE DECISION OF THE COURTS, ARTICLE 6 SUGGESTS THAT SOME CASES MIGHT NOT REACH THE COURTS.) IN THIS CONNECTION ALSO IT MAY BE TIMELY TO REVIVE CONSIDERATION OF THE

EMBASSY'S RECOMMENDATION (SAN JOSE 3738) THAT ATTORNEY
EDUARDO ORTIZ BE ENGAGED TO UNDERTAKE A THROUGH
ANALYSIS OF THE VESCO EXTRADITION PROBLEM INCLUDING
THE EXTRADITION LAW. THIS STUDY MIGHT HOWEVER USEFULLY
BE DEFERRED ONE MOE MONTH IN ORDER TO GET A BETTER
READING ON WHETHER ANY ACTION IN THE NEW ASSEMBLY TO
AMEND THE LAW IS INDEED LIKELY.

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